

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

BYRON LEE COGHLAN,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:11-cv-00078
)	
DEACONESS SPECIALTY CARE)	
CENTER and RICK DOERHOFF,)	
)	
Defendants.)	

NOTICE OF REMOVAL

**TO: UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

Come now, Defendants, DEACONESS SPECIALTY CARE CENTER (“Defendant Deaconess”), by its undersigned counsel, and hereby gives notice of the removal of a civil action entitled *Byron Lee Coghlan v. Deaconess Specialty Care Center*, Case No. 1016-CV38369 (“lawsuit”) from the Circuit Court of Jackson County, State of Missouri, to the United States District Court for the Western District of Missouri, Western Division. In support thereof, Defendant respectively states to this Honorable Court as follows:

INTRODUCTION

1. On or about December 22, 2010, Plaintiff filed a Petition in the Circuit Court of Jackson County, Sixteenth Judicial Circuit, in Missouri against Defendant Deaconess Specialty Care Center, and an individual Rick Doerhoff. In his Petition, Plaintiff alleges Defendants discriminated against him based on his age and disability in violation of the Missouri Human Rights Act.

2. As set forth more fully below, this case is properly removed to this Court under 28 U.S.C. § 1441 because Defendant Deaconess has satisfied the procedural requirement for removal and this Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332.

3. This Court has jurisdiction under § 1332 inasmuch as this is a civil action in which the amount in controversy exceeds the sum of Seventy-five Thousand dollars (\$75,000.00), exclusive of costs and interest, and is between citizens of different states.

NOTICE OF REMOVAL IS TIMELY

4. The Petition was served on Defendant Deaconess on or about January 14, 2011.

5. Plaintiff has not obtained service on any other Defendant at this time.

6. Accordingly, this Notice of Removal is timely filed under 28 U.S.C. § 1441.

COMPETE DIVERSITY EXISTS BETWEEN PLAINTIFF AND DEFENDANTS

7. There is complete diversity between Plaintiff and the named Defendants in this lawsuit.

8. Plaintiff is a citizen of the State of Nebraska (Petition, ¶ 7).

9. Defendant Deaconess is not a separate legal entity and has no assets (Raupach Aff., ¶ 5).¹

10. Deaconess Long Term Care of Missouri, Inc. operates the facility at issue under the fictitious name of Deaconess Specialty Care Center (see Missouri Secretary of State filings attached hereto as Exhibit A).

11. Deaconess Long Term Care of Missouri, Inc. is an Ohio Corporation with its principle place of business in Cincinnati, Ohio (Raupach Aff., ¶ 6).

12. Defendant Rick Doerhoff is a citizen of the State of Missouri (Petition, ¶ 9).

¹ The Affidavit of Ken Raupach is attached hereto.

**THE AMOUNT IN CONTROVERSY EXCEEDS
SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00)**

13. The matter in controversy exceeds the sum or value of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interests and costs.

14. With regard to Counts I and II of his Petition, Plaintiff alleges that as a result of the disability discrimination by Defendants Deaconess and Doerhoff, he suffered emotional distress and lost wages (see ¶¶ 33, 42 of Plaintiff's Petition).

15. With regard to Count III of his Petition (against only Defendant Deaconess), Plaintiff alleges that as a result of the alleged age discrimination by Defendant Deaconess, he suffered emotional distress and lost wages (see ¶ 49 of Plaintiff's Petition).

16. In his Prayer for Relief, among other things, Plaintiff prays for an award of back salary, reinstatement or front salary and benefits, compensatory damages, punitive damages, liquidated damages, damages for pain and suffering and attorney's fees (see Plaintiff's Prayer for Relief).

17. At the time Plaintiff's employment ended on June 26, 2009, Plaintiff's annual salary, excluding benefits, was \$76,500.00 (Raupach Aff., ¶ 9).

18. To date, Plaintiff's alleged backpay claim exceeds \$113,400.00.

19. Accordingly, Plaintiff's alleged backpay alone exceeds the amount in the controversy requirement.

20. Based on the relief sought, it is clear Plaintiff's alleged damages are in excess of Seventy-Five Thousand Dollars (\$75,000.00).

REMOVAL TO THIS COURT IS PROPER

21. The Circuit Court of Jackson County, Missouri is located within the District Court of the United States Western District of Missouri, Western Division. Thus, venue is proper in

this Court because it is the District embracing the place where such action is pending. 28 U.S.C. § 1441(a).

22. No previous application has been made for the relief requested herein.

23. The Notice of Removal is being filed within thirty (30) days of service of process on Defendant Deaconess.

24. Defendant Rick Doerhoff has not been served with process as of this date, and, therefore, need not join in or consent to this removal.

25. This Notice of Removal is accompanied by written notice to Plaintiff, and a copy of this Notice of Removal is being filed with the Clerk of the Circuit Court of the Jackson County, State of Missouri, on this date as required by 28 U.S.C. § 1446(d).

PLEADINGS AND PROCESS

26. As required by 28 U.S.C. § 1446(a), Defendant Deaconess, has attached copies of the State Court process and pleadings to this Notice of Removal. See a copy of the entire State Court file attached hereto as Exhibit B.

WHEREFORE, Defendants provide Notice of Removal of the above-styled action pending in the Circuit Court of Jackson County, State of Missouri to the United States District Court for the Western District of Missouri, Western Division.

Respectfully submitted,

THE LOWENBAUM PARTNERSHIP, LLC

/s/ Christopher M. Sanders
Christopher M. Sanders, AR #55198MO
222 South Central, Suite 901
Clayton, MO 63105
(314) 746-4809 - Main
(314) 746-4848 - Fax
csanders@lowenbaumlaw.com

CERTIFICATE OF SERVICE

I hereby certify that I have on January 21, 2011, served a true and correct copy of the foregoing via electronic filing upon the following:

Kevin Baldwin, Esq.
Eric Vernon, Esq.
Baldwin & Vernon, Attorneys at Law
11 E. Kansas Street
Liberty, MO 64068

/s/ Christopher M. Sanders

/kds